

PROPOSITION 104

OFFICIAL TITLE

HOUSE CONCURRENT RESOLUTION 2015

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE IV, PART 1, SECTION 1, CONSTITUTION OF ARIZONA; RELATING TO INITIATIVE AND REFERENDUM.

TEXT OF PROPOSED AMENDMENT

Be it resolved by the House of Representatives of the State of Arizona, the Senate concurring:

1. Article IV, part 1, section 1, Constitution of Arizona, is proposed to be amended as follows if approved by the voters and on proclamation of the Governor:

1. Legislative authority: initiative and referendum

Section 1. (1) [Senate; house of representatives; reservation of power to people] The legislative authority of the state shall be vested in the legislature, consisting of a senate and a house of representatives, but the people reserve the power to propose laws and amendments to the constitution and to enact or reject such laws and amendments at the polls, independently of the legislature; and they also reserve, for use at their own option, the power to approve or reject at the polls any act, or item, section, or part of any act, of the legislature.

(2) [Initiative power] The first of these reserved powers is the initiative. Under this power ten per ~~centum~~ CENT of the qualified electors shall have the right to propose any measure, and fifteen per ~~centum~~ CENT shall have the right to propose any amendment to the constitution.

(3) [Referendum power; emergency measures; effective date of acts] The second of these reserved powers is the referendum. Under this power the legislature, or five per ~~centum~~ CENT of the qualified electors, may order the submission to the people at the polls of any measure, or item, section, or part of any measure, enacted by the legislature, except laws immediately necessary for the preservation of the public peace, health, or safety, or for the support and maintenance of the departments of the state government and state institutions; but to allow opportunity for referendum petitions, no act passed by the legislature shall be operative for ninety days after the close of the session of the legislature enacting such measure, except such as require earlier operation to preserve the public peace, health, or safety, or to provide appropriations for the support and maintenance of the departments of the state and of state institutions; provided, that no such emergency measure shall be considered passed by the legislature unless it shall state in a separate section why it is necessary that it shall become immediately operative, and shall be approved by the affirmative votes of two-thirds of the members elected to each house of the legislature, taken by roll call of ayes and nays, and also approved by the governor; and should such measure be vetoed by the governor, it shall not become a law unless it shall be approved by the votes of three-fourths of the members elected to each house of the legislature, taken by roll call of ayes and nays.

Spelling, grammar, and punctuation were reproduced exactly as submitted in the "for" and "against" arguments.

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(4) [Initiative and referendum petitions; filing] All petitions submitted under the power of the initiative shall be known as initiative petitions, and shall be filed with the secretary of state not less than four months preceding the date of the election at which the measures so proposed are to be voted upon. All petitions submitted under the power of the referendum shall be known as referendum petitions, and shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the legislature which shall have passed the measure to which the referendum is applied. The filing of a referendum petition against any item, section, or part of any measure shall not prevent the remainder of such measure from becoming operative.

(5) [Effective date of initiative and referendum measures] Any measure or amendment to the constitution proposed under the initiative, and any measure to which the referendum is applied, shall be referred to a vote of the qualified electors, and shall become law when approved by a majority of the votes cast thereon and upon proclamation of the governor, and not otherwise.

(6) [Veto, AMENDMENT and repealing power; MEASURES APPROVED BY THE PEOPLE] FOR ALL INITIATIVE AND REFERENDUM MEASURES APPROVED BY A MAJORITY OF THOSE QUALIFIED ELECTORS VOTING ON THAT MEASURE, THE FOLLOWING APPLY:

(a) ~~The veto power of the governor, or the power of the legislature, to repeal or amend, shall not extend to initiative or referendum measures approved by a majority vote of the qualified electors~~ SHALL NOT EXTEND TO SUCH A MEASURE.

(b) THE LEGISLATURE MAY AMEND OR SUBSTANTIVELY MODIFY ANY INITIATIVE OR REFERENDUM MEASURE OR DIVERT OR WITHHOLD MONIES CREATED FOR OR ALLOCATED TO A SPECIFIC PURPOSE BY AN INITIATIVE OR REFERENDUM MEASURE ONLY BY THE AFFIRMATIVE VOTES OF TWO-THIRDS OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE TAKEN BY A ROLL CALL OF THE AYES AND NAYS AND ON APPROVAL BY THE GOVERNOR. THE GOVERNOR MAY VETO SUCH AN ACT OF THE LEGISLATURE AND THE LEGISLATURE MAY OVERRIDE THAT VETO BY THE AFFIRMATIVE VOTES OF THREE-FOURTHS OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE TAKEN BY A ROLL CALL OF THE AYES AND NAYS.

(c) THE LEGISLATURE MAY REPEAL ANY INITIATIVE OR REFERENDUM MEASURE ONLY IF AT LEAST FIVE YEARS HAVE PASSED SINCE THE APPROVAL OF THAT MEASURE BY A MAJORITY OF THOSE QUALIFIED ELECTORS VOTING ON IT AND ONLY BY THE AFFIRMATIVE VOTES OF TWO-THIRDS OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE TAKEN BY A ROLL CALL OF THE AYES AND NAYS AND ON APPROVAL BY THE GOVERNOR.

(d) BY A MAJORITY VOTE, THE LEGISLATURE MAY REFER BACK TO A VOTE OF THE PEOPLE AT THE NEXT REGULAR GENERAL ELECTION ANY PROPOSED AMENDMENTS TO OR REPEALS OF ANY MEASURES THAT HAVE BEEN APPROVED BY THE PEOPLE UNDER THE POWER OF THE INITIATIVE OR THE REFERENDUM.

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(e) NO MEASURE THAT AMENDS, REPEALS OR SUBSTANTIVELY MODIFIES AN INITIATIVE OR REFERENDUM MEASURE OR DIVERTS OR WITHHOLDS MONIES CREATED FOR OR ALLOCATED TO A SPECIFIC PURPOSE BY AN INITIATIVE OR REFERENDUM MAY BE ENACTED BY THE LEGISLATURE AS AN EMERGENCY MEASURE.

(7) [Number of qualified electors] The whole number of votes cast for all candidates for governor at the general election last preceding the filing of any initiative or referendum petition on a state or county measure shall be the basis on which the number of qualified electors required to sign such petition shall be computed.

(8) [Local, city, town or county matters] The powers of the initiative and the referendum are hereby further reserved to the qualified electors of every incorporated city, town, and county as to all local, city, town, or county matters on which such incorporated cities, towns, and counties are or shall be empowered by general laws to legislate. Such incorporated cities, towns, and counties may prescribe the manner of exercising said powers within the restrictions of general laws. Under the power of the initiative fifteen per centum CENT of the qualified electors may propose measures on such local, city, town, or county matters, and ten per centum CENT of the electors may propose the referendum on legislation enacted within and by such city, town, or county. Until provided by general law, said cities and towns may prescribe the basis on which said percentages shall be computed.

(9) [Form and contents of initiative and of referendum petitions; verification] Every initiative or referendum petition shall be addressed to the secretary of state in the case of petitions for or on state measures, and to the clerk of the board of supervisors, city clerk, or corresponding officer in the case of petitions for or on county, city, or town measures; and shall contain the declaration of each petitioner, for himself, that he is a qualified elector of the state (and in the case of petitions for or on city, town, or county measures, of the city, town, or county affected), his postoffice address, the street and number, if any, of his residence, and the date on which he signed such petition. Each sheet containing petitioners' signatures shall be attached to a full and correct copy of the title and text of the measure so proposed to be initiated or referred to the people, and every sheet of every such petition containing signatures shall be verified by the affidavit of the person who circulated said sheet or petition, setting forth that each of the names on said sheet was signed in the presence of the affiant and that in the belief of the affiant each signer was a qualified elector of the state, or in the case of a city, town, or county measure, of the city, town, or county affected by the measure so proposed to be initiated or referred to the people.

(10) [Official ballot] When any initiative or referendum petition or any measure referred to the people by the legislature shall be filed, in accordance with this section, with the secretary of state, he shall cause to be printed on the official ballot at the next regular general election the title and number of said measure, together with the words "yes" and "no" in such manner that the electors may express at the polls their approval or disapproval of the measure.

(11) [Publication of measures] The text of all measures to be submitted shall be published as proposed amendments to the constitution are published, and in submitting such measures and proposed amendments the secretary of

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state and all other officers shall be guided by the general law until legislation shall be especially provided therefor.

(12) [Conflicting measures or constitutional amendments] If two or more conflicting measures or amendments to the constitution shall be approved by the people at the same election, the measure or amendment receiving the greatest number of affirmative votes shall prevail in all particulars as to which there is conflict.

(13) [Canvass of votes; proclamation] It shall be the duty of the secretary of state, in the presence of the governor and the chief justice of the supreme court, to canvass the votes for and against each such measure or proposed amendment to the constitution within thirty days after the election, and upon the completion of the canvass the governor shall forthwith issue a proclamation, giving the whole number of votes cast for and against each measure or proposed amendment, and declaring such measures or amendments as are approved by a majority of those voting thereon to be law.

(14) [Reservation of legislative power] This section shall not be construed to deprive the legislature of the right to enact any measure.

(15) [Self-executing] This section of the constitution shall be, in all respects, self-executing.

2. Applicability

This measure applies prospectively to actions of the Legislature relating to measures that are initiated or referred by the people, whether initiated or referred before or after the effective date of this measure.

3. The Secretary of State shall submit this proposition to the voters at the next general election as provided by article XXI, Constitution of Arizona.

FINAL VOTE CAST BY THE LEGISLATURE ON HCR 2015

House -	Ayes, 45	Senate -	Ayes, 19
	Nays, 15		Nays, 9
	Not Voting, 0		Not Voting, 2

House Final Passage	Senate Final Passage
Per Joint Conference	Per Joint Conference
Ayes, 31	Ayes, 17, on
Nays, 22	reconsideration
Not Voting, 7	Nays, 12
	Not Voting, 1

ANALYSIS BY LEGISLATIVE COUNCIL

(In Compliance With A.R.S. Section 19-124)

Proposition 104 would make a series of changes to the Arizona Constitution relating to initiative and referendum. Under current law, the State Legislature by a majority vote may subsequently amend or repeal any ballot measure that has been approved by the voters, unless that ballot measure was approved by a majority of the people who

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are registered to vote in this state, rather than by a majority of people who voted on the ballot measure.

Proposition 104 would make all of the following changes apply to any ballot measure that is approved by a majority of the people who voted on the measure:

1. Prohibits the Governor from vetoing the approved measure.
2. Prohibits the State Legislature from repealing the approved measure until at least five years have passed since the measure was approved. This repeal would require a two-thirds vote of the State Legislature and the approval of the Governor.
3. Requires a two-thirds vote of the State Legislature to amend or substantively modify the approved measure.
4. Requires a two-thirds vote of the State Legislature to transfer funds that were designated to a specific purpose by the approved measure.
5. Allows the Governor to veto any bill from the State Legislature that amends the approved measure and requires a three-fourths vote of the State Legislature to override that veto.
6. Allows the State Legislature by a majority vote to refer back to the ballot any proposed legislative amendments to any ballot measure that has been approved by the voters.
7. Prohibits the State Legislature from using "emergency legislation" to enact any changes to the approved measure. (Emergency legislation requires a two-thirds vote of the State Legislature to pass, goes into effect immediately on approval of the Governor and is not subject to referendum by the people.)

This proposition would apply to any legislation passed by the State Legislature after the proposition goes into effect and would apply to any ballot measure approved by the voters, whether before or after this proposition goes into effect.

ARGUMENT “FOR” PROPOSITION 104

The Healthy Arizona suggests a “Yes” vote on Prop 104. At the same time we urge strong public scrutiny of the failure of the Administration and Legislature to implement any provision of the Healthy Arizona Initiative, passed overwhelmingly by voters two years (and two legislative sessions) ago.

The Healthy Arizona Initiative (then Prop 203) has two parts. The first was to raise AHCCCS healthcare eligibility levels from the woefully inadequate 35% of the federal poverty level to include all Arizonans living in poverty, including the working poor. The second part was to fund six successful healthcare programs (Healthy Families, Health Start, WIC, teenage pregnancy prevention, rural health and research) created by the legislature but later defunded or underfunded. This funding was to have come from lottery money, after the Heritage Fund. (See our comment under Prop 304 for more analysis of what happened with the lottery money.)

Other worthy healthcare programs, notably Kids’ Care and premium sharing, have been supported by our Coalition as partial responses to the electoral mandate of 1996, but they still fall far short of what the voters demanded as minimum decent healthcare access. This current initiative will not only protect future initiatives from such treatment, but passage of the five-year repeal clause can be considered further

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endorsement of recently passed initiatives, such as ours. Support democracy in Arizona, and healthcare availability: Vote “yes.”

While suggesting a “yes” vote on Prop 104, the Coalition does not oppose Prop 105.

Steven Nash, Chair
Healthy Arizona Coalition
Tucson

Maryetta Patch, Vice Chair
Healthy Arizona Coalition
Phoenix

ARGUMENT “FOR” PROPOSITION 104

Argument for Proposition 104 (HCR 2015)

The volunteers of Common Cause / Arizona believe that this proposition provides a better solution to the problem of a Legislature that does not respect the will of the people. This measure will retroactively protect measures adopted by the people of Arizona, such as the Heritage Fund, from future dismemberment by the Legislature. It also avoids a technical problem relating to the appropriation of funds in the competing measure. Arizona Common Cause volunteers strongly urge Arizona voters to vote “YES” on Proposition 104.

Rod Engelen, State Chairman
Common Cause of Arizona
Phoenix

ARGUMENT “FOR” PROPOSITION 104

The Arizona Farm Bureau, a voluntary organization of the Arizona’s farmers and ranchers, **SUPPORTS** Proposition 104 and **OPPOSES** Proposition 105.

Proposition 104 is a balance between this state’s representative form of government and the people’s right to initiate change in state law. Proposition 104 also protects the public when out-of-state interests and big money stymie the debate on a ballot issue. The state legislature must have the ability to address, debate and change laws that are ineffective, outdated or have produced an unintended consequence which must be fixed in a timely manner. Voters can not fix unintended consequences in a timely manner. That is why we elect our representatives.

But, there is sanctity in the people’s vote.

Proposition 104 raises the standard by which the legislature may change a voter approved initiative or referendum. It requires that two-thirds of the legislature vote for a proposed change, not the current majority vote. In today’s legislature, this will require bipartisan support and support from within the diverse views of each party. It also parallels what is required to override a Governor’s veto.

On the other hand, **Proposition 105 is a lawyer’s dream and the public’s nightmare.** The legislature will only be allowed to change a voter approved law if their proposed change “...further the purpose of such measure...”. What does that mean? It means lawyers descending upon the capital arguing what those five words mean every time any change is proposed. On top of this, it takes a three-fourths vote of the legislature to enact a change that “further the purpose of such measure”.

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Let's respect our representative form of government and our initiative process. **Vote YES on Proposition 104** and Vote NO on Proposition 105.

Ken Evans, President
Arizona Farm Bureau Federation
Yuma

Andy Kurtz, Secretary and Chief
Administrative Officer
Arizona Farm Bureau Federation
Phoenix

ARGUMENT "FOR" PROPOSITION 104

VOTE "YES" ON PROPOSITION 104!

Proposition 104 is intended to protect the laws we as citizens create through our powers of initiative and referendum from being undermined by subsequent actions of the State Legislature. Should it be necessary to "fine tune" voter approved law to make it more workable or to keep up with changing times, Proposition 104 is designed to ensure the State Legislature must work in a bi-partisan manner and in partnership with the individuals and organizations which were successful in their initiative and referendum efforts. Proposition 104 is the product of the combined efforts of a wide variety of public interest organizations including Valley Citizens League, League of Women Voters and Arizona Common Cause.

Proposition 104:

- **Protects all initiated and referred law "whether initiated or referred before or after" the 1998 General Election**--including the Heritage Fund, the Campaign Finance Reform Initiative, Healthy Arizona Initiative, the State Lottery, and the Tobacco Tax.
- **Eliminates the Governor's authority to veto the voters' approval of an initiative or referendum.**
- **Eliminates the Legislature's authority to repeal voter approved initiatives or referendums less than 5 years old.**
- **Requires a 2/3 vote of the Legislature to amend, modify, or repeal any initiated or referred law.**
- **Requires a 2/3 vote of the Legislature to divert initiative created funds to other uses.**
- **Prohibits the attachment of emergency clauses to Legislative measures which amend, modify, or repeal initiated or referred law.**
- **Ensures that by a simple majority vote of each house, the Legislature can voluntarily refer measures which amend, modify, or repeal initiated or referred law to a vote of the people.**

We urge you to **VOTE "YES" ON PROPOSITION 104!**

Tony Cosentino
President
Valley Citizens League
Phoenix

Bart Turner
Executive Director
Valley Citizens League
Phoenix

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ARGUMENT “AGAINST” PROPOSITION 104

No on Proposition 104

As a former Arizona Secretary of State, I can tell you that I have never seen a more deceptive attack on the initiative process than Proposition 104. Proposition 104 was placed on the ballot by the legislature to confuse voters so they don't vote for real reform.

The real reform is the Voter Protection Act, which was signed by 245,000 Arizona voters and is co-chaired by Attorney General Grant Woods and Sheriff Joe Arpaio. The Voter Protection Act (Proposition 105) will prohibit the Legislature from repealing citizen measures approved by voters and prohibit the governor from vetoing ballot measures. Technical amendments would be allowed for only if they further the purpose of the initiative and could be adopted only with a ¾ vote of the entire legislature.

Proposition 104 is deceptive, watered down, and only meant to divide the vote. It ought to be renamed for what it is “The Politician Protection's Act.” That's because the legislative sponsors of this measure are the same people who for years have been thwarting the will of the people by repealing and amending ballot measures.

I strongly urge you to vote No on Proposition 104 - The Politician's Protection Act - because it is just a wolf in a sheep's clothing.

Instead, I urge you to vote Yes on Proposition 105 - The Voter Protection Act.

Richard Mahoney
Former Arizona Secretary of State
Chairman, Voter Protection Alliance
Phoenix

ARGUMENT “AGAINST” PROPOSITION 104

ARGUMENT “AGAINST” PROPOSITION 104

As a former Arizona Attorney General (and Governor's Chief of Staff), I can tell you that Proposition 104 is a classic “bait and switch.” It was placed on the ballot by the Legislature in hopes of confusing you so that you will not vote “Yes” for the Voter Protection Act – Proposition 105.

But as a curb on Legislative arrogance in undoing measures that the people have approved at the polls, Proposition 104 has serious flaws:

It allows the Legislature to totally repeal an initiative or referendum approved by the voters, after just five years.

It allows the Legislature immediately to amend an initiative or referendum with just a 2/3 vote. And these amendments would not have to further the purpose of the initiative or referendum, but could completely change the purpose or direction of what the people had approved.

Proposition 104 was drafted by legislators, eager to preserve legislative power from the restrictions that the Voter Protection Act (Proposition 105) would impose. I seriously urge you to vote “No” on Proposition 104. Accept no substitutes – instead vote “Yes” on Proposition 105, the true Voter Protection Act. Proposition 105 is much

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stronger medicine, placed on the ballot by 245,000 Arizona voters. Proposition 105 will preserve the will of the people.

John A. “Jack” LaSota
Former Attorney General
Phoenix

Paid for by Voter Protection Alliance; Richard Mahoney, Chairman

ARGUMENT “AGAINST” PROPOSITION 104

ARGUMENT AGAINST HCR 2015

HCR 2015 is a tool of deception conceived by the Arizona State Legislature. It is designed to meet the individual needs of the legislature and to ignore the voice of Arizona voters. The honorable people of the State of Arizona have entrusted the state legislature to abide by the ballot measures they have voted into law. Time and again Arizona voters have overwhelmingly voiced their objection to the Arizona State Legislature’s outrageous idea that “they know what is best for the people of Arizona”, ignoring the ballot measures we have voted into law. A vote against this measure tells our elected representatives that they work for the people of Arizona. By voting no on HCR 2015 we say to the Arizona State Legislature, “Obey the laws we have passed as we obey the laws you place on us.”

Austin G. Nunez
Chairman, San Xavier District
Tohono O’odham Nation
Tucson

Paid for by Voter Protection Alliance; Richard Mahoney, Chairman

BALLOT FORMAT

PROPOSITION 104

PROPOSED AMENDMENT TO THE CONSTITUTION BY THE LEGISLATURE

OFFICIAL TITLE

HOUSE CONCURRENT RESOLUTION 2015
PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA;
AMENDING ARTICLE IV, PART 1, SECTION 1, CONSTITUTION OF ARIZONA;
RELATING TO INITIATIVE AND REFERENDUM.

DESCRIPTIVE TITLE

AMENDING ARIZONA CONSTITUTION RELATING TO INITIATIVE AND REFERENDUM MEASURES; PROHIBITS GOVERNOR'S VETO; PROHIBITS LEGISLATIVE REPEAL FOR 5 YEARS; REQUIRES 2/3rds VOTE TO REPEAL, AMEND, SUBSTANTIVELY MODIFY OR TRANSFER FUNDS DESIGNATED BY MEASURE; ALLOWS GOVERNOR TO VETO BILL AMENDING MEASURE; REQUIRES 3/4ths VOTE TO OVERRIDE VETO; PROHIBITS "EMERGENCY" CLAUSE ON AMENDMENTS.

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A "yes" vote shall have the effect of placing certain limits on veto, amendment, repeal or transfer of funds approved by initiative or referendum, including prohibiting the Governor from vetoing initiative or referendum measures, prohibiting legislative repeal for 5 years and requiring a 2/3rds vote of the State Legislature to repeal, amend, substantively modify or transfer funds designated by an approved measure.

YES ☐

A "no" vote shall have the effect of retaining the current constitutional provisions for veto, amendment or repeal of initiatives and referenda.

NO ☐

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"for" and "against" arguments.*